IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5929 of 1986
With
SPECIAL CIVIL APPLICATION No. 5930 of 1986

For Approval and Signature:

HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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PRAHALDBHAIMANILALPATEL - Petitioner(s)

Versus

GEB & 4 - Respondent(s)

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Appearance :
MR MUKESH H RATHOD for Petitioners
Ms MAYA DESAI for MR MD PANDYA for Respondent(s) : 1,2 & 3,
RULE SERVED for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 03/10/2005

ORAL JUDGMENT

The petitioners before this Court had been engaged by the respondent-Gujarat Electricity Board [hereinafter referred to as, "***the Board***"] as Apprentice in Commercial Practice in the year 1983. The petitioners have

successfully completed the period of Apprenticeship in the year 1984. However, under communication dated 21st January, 1986 the Board informed the petitioners that they were required to appear and pass the Trade Test, and unless they passed such trade test, they would not be eligible for appointment in the Board. The respondent no.4 authority also, under its communication dated 29th January, 1986 informed the Board that the apprenticeship agreement was required to be registered within three months from the date the apprenticeship agreement was drawn. *Nevertheless*, in certain cases the Board had failed to forward the apprenticeship agreements until after the apprenticeship period was over. Such agreements submitted after the specified period could not be registered and that the registration in respect of such apprenticeships were cancelled. Feeling aggrieved, the petitioners have preferred the present petitions.

The petitioners have challenged the Board's communication dated 12th January, 1986 in calling upon the petitioners to take the trade test and to pass the examination as a condition precedent for getting employment in the Board and the action of the respondent no.4 in cancelling the registration of the apprenticeship agreements *qua* the petitioners.

Section 4 of the Apprentices Act, 1961 [hereinafter referred to as, "***the Act***"] provides for contract of apprenticeship. Section 9 thereof provides for practical and basic training of apprentices. Section 10 thereof provides for related instructions to be given to the apprentices during the period of practical training. Section 12 of the Act provides for obligations of apprentices. It provides, *inter alia*, that every apprentice shall attend practical and instructional classes regularly. Section 18 of the Act provides that apprentices are trainees and are not workers, therefore, provisions of any law with respect to labour shall not apply to or in relation to such apprentice. Section 21 of the Act provides that every trade apprentice who has completed the period of training shall appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training. On passing the trade test, an apprentice is required to be granted a certificate of proficiency in the trade by the National Council. Section 22 of the Act provides that, "**it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his**

establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.”

In view of the above statutory provisions, it is imperative for an apprentice in any trade to take a trade test. Unless the apprentice passes the trade test and is granted proficiency certificate by the National Council, the apprenticeship cannot be said to be complete. In my view, therefore, the Board was wholly justified in informing the petitioners that they were required to pass the trade test given by the National Council.

As to the petitioner's claim for employment in the Board, the Board has made a counter affidavit. It is stated that the Board is under no obligation to provide employment to the apprentices who had taken training in the Board. *Nevertheless*, the Board has, under its Commercial Trade Recruitment Procedure, decided to maintain a merit list of apprentices in accordance with the merit obtained on the basis of marks secured in SSC Examination and additional marks for higher qualification. Such merit list is revised time and again so as to avail of the best of the apprentices.

Considering his merit, the petitioner in Special Civil Application No. 5920 of 1986 was at Serial No. 148. It is stated that unless 147 persons above the petitioner in the merit-list were offered employment in the Board, the petitioner could not be offered employment in the Board. It is also stated that the petitioner had crossed the age limit of 30 years. He, therefore, could not be offered employment.

As recorded hereinabove, passing of the trade test and conferment of the proficiency certificate by the National Council is a sine quo non for completion of apprenticeship. Unless an apprentice takes a trade test, passes the test and is conferred the proficiency certificate, he cannot be said to have successfully completed the apprenticeship. The reliefs claimed are contrary to the aforesaid legal position, are thoroughly misconceived and require to be rejected. As to the employment in the Board, as recorded hereinabove, the Board does employ its apprentices in order of their merit. The petitioners, therefore, are required to await their turn for employment in order of the merit list. If in the process, the petitioners cross the age bar, the petitioners would not be eligible for employment in the Board. The petitioners having taken apprenticeship

training in the Board had no right to employment in the Board except in accordance with the Recruitment Procedure referred to hereinabove. It is not the complaint of either of the petitioners that the aforesaid Recruitment procedure has not been followed uniformly. As recorded hereinabove, now that the petitioners have crossed the specified age, the petitioners' employment in the service of the Board is out of question.

Mr. Rathod has relied upon the judgments of the *Hon'ble* Supreme Court in the matters of ***U.P State Electricity Board v. Shiv Mohan Singh & Anr.*** [(2004) 8 SCC 402] and of ***Mukesh K Tripathi vs. Senior Divisional Manager, LIC & Ors***. [(2004) 8 SCC 387]. In the matter of UP State Electricity Board [*Supra*], considering the provisions of the Act, the *Hon'ble* Court held that, "..**the expression 'shall' appearing in sub-section (4) of Section 4 of the Apprentices Act, 1961 is directory and non-registration of the contract will not change the character of the apprentices and they will not acquire the status of workmen. Once an incumbent is appointed as an apprentice he will continue to be an apprentice unless a formal order of appointment follows."** In the matter of Mukesh K. Tripathi [*Supra*] also, the *Hon'ble* Supreme

Court held that, "**..A "workman" within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 must not only establish that he is not covered by the provisions of the Apprentices Act but must further establish that he is employed in th establishment for the purpose of doing any work contemplated in the definition. Even in a case where a period of apprenticeship is extended, a further written contract carrying out such intention need not be executed, a further written contract carrying out such intention need not be executed. But in a case where a person is allowed to continue without extending the period of apprenticeship either expressly or by necessary implication and regular work is taken from him, he may become workman. A person who claims himself to be an apprentice has certain rights and obligations under the statute.**"

In the present case, neither of the petitioners has claimed right as a workman. Neither of the aforesaid judgments shall have applicability on the facts of the present case.

No other contention is raised before me. The

petitions are devoid of any merit. Petitions are, accordingly, dismissed. *Rule nisi* issued in each petition is *discharged*. The parties shall bear their own cost.

Registry shall maintain copy of this judgment in each petition.

{Miss R.M Doshit, J.}

*Prakash**